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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,687	09/30/2003	Vincent Ardizzone	03-12582	5081
25189	7590	12/16/2004	EXAMINER	
CISLO & THOMAS, LLP 233 WILSHIRE BLVD SUITE 900 SANTA MONICA, CA 90401-1211			LACYK, JOHN P	
			ART UNIT	PAPER NUMBER
			3736	

DATE MAILED: 12/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/674,687

Applicant(s)

ARDIZZONE ET AL.

Examiner

John P Lacyk

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 7, 11-13 is/are rejected.
- 7) ☒ Claim(s) 5, 6, 8-10 and 14-21 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kim et al in view of Chiu and Sakurada et al.

Kim et al discloses a device that provides both a magnetic field and a far infrared emitter to the body for therapy. Kim et al doesn't specifically teach using a plastic case or container for applying the device to the body for therapy. Chiu teaches that it is well known to use a plastic container or casing for applying magnets to the body for therapy. Therefore a modification of Kim et al such that the container or device is made of plastic would have been obvious in view of the teachings of Chiu. Kim et al also fails to specifically teach using a bio-ceramic material to emit the far infrared radiation that emits the radiation at body temperature. Sakurada et al teaches that it is well known to use bio-ceramic fibers that are woven into a mat or fabric sheet that is applied to the body. Therefore a modification of Kim et al such that the infrared material used is a bio-ceramic fiber and that the bio-ceramic fibers are woven into a mat would have been obvious in view of the teachings of Sakurada et al. Sakurada et al also teaches (column 1, lines 12-21; Figure 6) that it is conventionally known to use a ceramic material applied to the body to emit far infrared radiation and that the ceramic emits larger amounts when heated than at room temperature. Since the ceramic temperature would be increased when applied to the body because the body temperature is above normal

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room temperature, the ceramic material would inherently emit far infrared radiation at body temperature.

3. Claims 2-4 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kim et al as applied to claim 1 above, and further in view of Ito.

Kim et al does not specifically teach that the magnet has or is based on neodymium. Ito discloses a similar device that teaches that the use of both magnets and far infrared emitters together and teaches that it is well known to use magnets using neodymium and that the far infrared emitter uses a bio-ceramic material. Therefore a modification of Kim et al such that the device uses the specific type of magnet and far infrared emitting material would have been obvious since Ito teaches that the use of such materials is well known with such devices.

4. Claims 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kim et al as applied to claims 1-3 and 11 above, and further in view of Ardizzone.

Ardizzone teaches that it is well known to use magnets having alternating polarities that provide alternating polarities in any direction and using alternating polarities of different shapes. Therefore a modification of Kim et al such that the magnets used have alternating polarities in any direction and in different shapes would have been obvious in view of the teachings of Ardizzone.

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4. Applicant's arguments, see page 3, filed 9/21/2004, with respect to the rejection(s) of claim(s) 1 and 14 under Kim et al have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of Sakurada et al.

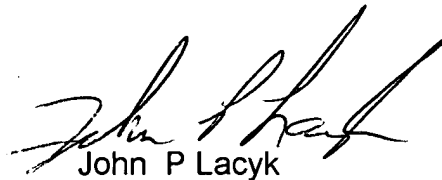
5. Claims 5-6, 8-10 and 14-21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John P Lacyk whose telephone number is 571-272-4728.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571-272-4726. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "John P Lacyk", is positioned above the printed name and title.

John P Lacyk  
Primary Examiner  
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J.P. Lacyk